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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/678,741

10/03/2003

Hassan Mostafavi

VM 03-035-US

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55499

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07/20/2011

Vista IP Law Group (Varian)  
1885 Lundy Ave, Suite 108  
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EXAMINER

ROY, BAISAKHI

ART UNIT

PAPER NUMBER

3777

MAIL DATE

DELIVERY MODE

07/20/2011

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/678,741	<b>Applicant(s)</b> MOSTAFAVI, HASSAN	
	<b>Examiner</b> BAISAKHI ROY	<b>Art Unit</b> 3777	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 April 2011.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32,50-52, 56,61-63,66,67,75,81-91,94-103 and 105-114 is/are pending in the application.
- 4a) Of the above claim(s) 1-32,50-52,75,82-91,98-102 and 109-112 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 94-97 and 105-108 is/are allowed.
- 6) ☒ Claim(s) 56,61-63,66,67,81,93,103,113 and 114 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments, filed 3/8/11, with respect to the rejection(s) of claim(s) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of newly found prior art.

### ***Allowable Subject Matter***

Claims 94-97 and 105-108 are allowable.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 56, 66, 67, 81, 103, 113, and 114 are rejected under 35 U.S.C. 102(b) as being anticipated by Pelc et al. (5051903). Pelc et al. disclose a system and method for acquiring image data (col. 9 lines 8-14), calculating an image phase value, and assigning the image phase value for the image data using a processor to thereby bin the image data (col. 10 lines 25-55), wherein the image data corresponds with a phase value of a breathing cycle or the respiration signal 73 and the processor is configured to calculate the image phase value using the phase value of the breathing cycle (col. 9 lines 15-38 lines 55-65). The process also includes storing the binned image data (col. 11 lines 7-37).

Art Unit: 3777

4. Claims 56, 66, 67, 81, 103, 113, and 114 are rejected under 35 U.S.C. 102(b) as being anticipated by Polz (5924989). Polz discloses a system and method for acquiring image data (col. 2 lines 35-43), calculating an image phase value, and assigning the image phase value for the image data using a processor to thereby bin the image data (col. 3 lines 2-9), wherein the image data corresponds with a phase value of a breathing cycle or the respiration cycle and the processor is configured to calculate the image phase value using the phase value of the breathing cycle and also includes storing the binned image data (col. 5 lines 4-12 lines 38-60, col. 6 lines 25-31).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 61-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pelc et al. in view of Pelc et al. (4663591). Pelc et al. '903 teach NMR imaging techniques but do not address tomography procedures. In the same field of endeavor Pelc et al. ('591) disclose a system and method for reducing artifacts in images where the images may be other imaging techniques as well such as computed tomography or PET or MRI (col. 20 lines 22-30). It would have therefore been obvious to one of ordinary skill in the art to use the teaching by Pelc '591 to modify Pelc et al. '903 to provide alternate imaging sources.

Art Unit: 3777

7. Claims 61-63 rejected under 35 U.S.C. 103(a) as being unpatentable over Polz in view of Pelc et al. (4663591). Polz teaches ultrasound imaging techniques but do not address tomography procedures. In the same field of endeavor Pelc et al. ('591) disclose a system and method for reducing artifacts in images where the images may be other imaging techniques as well such as computed tomography or PET or MRI (col. 20 lines 22-30). It would have therefore been obvious to one of ordinary skill in the art to use the teaching by Pelc '591 to modify Polz to provide alternate imaging sources.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BAISAKHI ROY whose telephone number is (571)272-7139. The examiner can normally be reached on M-F (9:00 a.m. - 5:30 p.m.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Chen can be reached on 571-272-3672. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3777

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BR

/B. R./

Examiner, Art Unit 3777

/Tse Chen/

Supervisory Patent Examiner, Art Unit 3777